IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and
THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT PETITION No. 18372 of 2002

Between:

B. Krishnaiah S/O B. Peddabba
Fulltime Masalchi, in the 3rd Addl. Munsif Magistrate Court, Tirupathi, CHITTOOR DISTRICT.

..... PETITIONER

AND

1.The Government of A.P., rep. by its Secretary, Home Department (Courts), Secretariat, Hyderabad.
2.The District Judge,
Chittoor District, CHITTOOR.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order, Orders or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in not considering petitioner's case for regularisation/conversion into Last Grade Service along with other similarly situated persons as illegal, arbitrary, violative of Art. 14 & 16 of the Constitution of India and violative of Principles of Natural Justice and consequentially direct the respondents to regularise petitioner’s services in the Last Grade Service with retrospective effect i.e. from the date of petitioner juniors whose services were regularised with all consequential benefits includijng the arrears of salary etc., in the interests of justice.

Counsel for the Petitioner: Mr. A.CHANDRAIH NAIDU

Counsel for the Respondents: Mr. C.V.NAGARJUNA REDDY

SC for A.P. High Court.

The Court made the following :

ORAL ORDER:

(per Honourable Sri Devinder Gupta, the Chief Justice)

The petitioner is seeking a direction against the respondents for regularization of his services in the Last Grade Service with retrospective effect from the date his junior's services were regularized with all consequential benefits including arrears of salary.

The petitioner, admittedly, was appointed as part-time Gardener on 4.9.1980 by proceedings of the Subordinate Judge, Tirupati in Dis.No.1130A/80, dated: 4.9.1980 and was converted as Full Time Masalchi-cum-Night Watchman as per the proceedings of the District Judge, Chittoor dated: 2.4.1982. Petitioner's case is that Smt. M.Krishnamma, another Full Time Masalchi of Sub-Court, Puttur completed her five years of service as Full Time Masalchi on 5.4.1997, whereas the petitioner completed his five years of service on 3.4.1997. It is so recorded in the proceedings L.Dis.No.368-A/1997, dated: 19.8.1997 of the District and Sessions Judge, Chittoor. By proceedings dated: 1.5.1999 the services of Smt. Krishnamma, Full Time Masalchi, then working in the Senior Civil Judges Court, Puttur, were regularized in permanent government post in the Last Grade Service in the scale of 1375-25-1425-30-1625-40-1825-50-2075-60-2375. Pay was fixed with retrospective effect from 25.11.1993 and arrears due on account of the difference of salary were also directed to be paid for a period of three years preceding the date of the order. Thus, the sole grievance of the petitioner is that services of junior Full Time Masalchi were converted into permanent Government Post in the Last Grade Service, whereas the petitioner was not given the same treatment, though, was shown as senior to M.Krishnamma. The petitioner also placed reliance upon the two G.Os., namely, G.O.Ms.No.212, Finance & Planning Department, dated: 22.4.1994 and G.O.(P)

No.112 Finance and Planning Department, dated: 23.7.1997 and sought the relief prayed for in the writ petition.

The Writ Petition is resisted by the respondents on the affidavit of G.Bhavani Prasad, District and Sessions Judge, Chittoor. Though he did not dispute that the petitioner worked as part-time Gardener and later on was taken as Full Time Masalchi and that name of M.Krishnamma was recommended for being placed in the permanent Government Post in the Last Grade Service, but, it is stated that for want of full particulars, petitioner's name was not included in the list for regularization. Service particulars were provided by the III Additional Junior Civil Judge, Tirupati as regards the contingent employees working in his Court, who had stated that the petitioner, Full Time Masalachi, entered the Department on 4.4.1992 and since he had not completed five years as on the cut off date referred to in G.O.Ms.No.212, dated: 22-4-1994, he was not regularized.

We have heard learned counsel for parties.

Paragraph 9 of the affidavit-in-reply says that the petitioner was appointed as Full Time Masalchi in 1992 and there is no mention of particulars in the application or the proposals submitted by the concerned officer that the petitioner has worked as Part Time Masalchi and was converted as Full Time Masalchi, and, therefore, his services were not regularized.

We have referred to the record, which reveals that the petitioner was appointed as Part-time Gardener on 4.9.1980, and, thereafter, had continuously worked as such till 4.4.1992 when he was made Full Time Masalchi. In case, that be the position, there is no reason why the petitioner was not given the benefit of the two G.Os. aforementioned, particularly, G.O.(P) No.112. It had clarified the earlier G.O.Ms.No.212 by saying that services of such persons who have worked continuously as part-time workers for a minimum period of 10 years and are continuing as on 25.11.1993, the date on which The Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff pattern and Pay Structure) Act, 1994 came into force, be regularized by the appointing authorities subject to the fulfillment of the conditions mentioned therein. Petitioner, admittedly, on 25.11.1993 had put in more than 10 years, namely, Part-time Gardener from 4.9.1980 to 3.4.1992 and from 4.4.1992 onwards as Full Time Masalchi. Merely that these full particulars were not available, that would not be a ground for not giving the

same treatment. Therefore, his case also has got to be considered in accordance with law i.e. G.O.Ms. (P) No.112, dated: 23.7.1997. Regularisation may be on fulfillment of certain conditions like possessing requisite qualifications as per the rules in force as on the date on which services have to be regularized, the persons should be within age limit as on the date of appointment, rule of reservation wherever applicable has to be followed and back-logs will be set off against future vacancies, and, absorption has to be against clear vacancies of posts considered necessary to be continued as per work load. Since petitioner's junior was duly considered and regularized, we allow the Writ Petition with direction to the second respondent to examine the record and take a decision afresh, and, in case, petitioner is found to be eligible, to pass appropriate orders giving the same treatment as was given to his junior. Appropriate orders will be passed by the District Judge within two months from the date of the receipt of the writ order. No costs.

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DEVINDER GUPTA, C.J.

10.2.2005.

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B.SESHASAYANA REDDY, J.

VR.

Rule is made absolute as above.

To

1.The Secretary to Government of A.P., Home Department (Courts), Secretariat, Hyderabad.
2.The District Judge,
Chittoor District, CHITTOOR.

3. Two CD copies.